cite cases upholding the retroactive legislation in the "Portal to Portal" Act. The argument is that both the additional wages under the Wage and Hour Law and the increases under the Federal Rent Law were creatures of statute and that, therefore, the latter could be taken away by statute just as the former was. Passing the distinction that the Court of Appeals found, in that the former (Wage and Hour Law) was taken away by Congress which granted it and that the latter (Federal Rent Law) which was granted by Congress is sought to be taken away by a State Legislature which had nothing to do with it in the first instance, it is not a fact that the rent increases were creatures of statute in the same sense as the additional wages. The exact contrary is true. While, in the absence of the Wage and Hour Law, no additional wages would have accrued to the workers, it was precisely the existence of the Federal Rent Act which prevented the landlords from obtaining increases in rents beyond even those which the Administrator granted. To put it somewhat differently, the Wage and Hour Law *aided* the workers, but the Federal Rent Act *injured* the landlords. In the absence of the Act, the landlords could have obtained, as a common law right, such rents as would have been reasonable in the circumstances. The additional wages were truly statutory *grants* or *creations;* the increases in rents marked only a relaxation of the restrictions imposed upon landlords. In providing for increases the Federal Rent Act merely returned, so to speak, a part of the common law rights which the landlords had in the first place; it gave them nothing which they would not have been entitled to without the Act. To say that a statute may take away increases in rents, following a relaxation of imposed ceilings, just as it may take away additional wages given as a grant, is to lose sight of the distinction completely.

The contention of the petitioner and Attorney General that Section 13-a deals with the payment and amount of

rentals *in futuro*, that is, subsequent to May 1, 1950, has no validity. Of course, it deals with *making* of rent payments and the amounts thereof *after* the effective date of the law, but in doing so it deals with rent claims which accrued *prior* to the effective date of the law, and it is the latter that the State Court of Appeals properly struck down. Moreover, the petitioner's and Attorney General's argument here flies in the face of (1) Sec. 204j of the Federal Rent Law, which provided for termination of Federal control, upon takeover by the State, on the *effective* date of the State law; (2) Sec. 204f of the Federal Rent Law, which provided for the survival of rights and liabilities incurred prior to the termination of Federal control; and (3) the Federal survival statute (1 U. S. C. A. 109), which provides for the survival of a liability previously incurred under an expired Federal statute.

The petitions should be denied.

Respectfully submitted,

Barnet Kaprow,
Counsel for Petitioners.

Kramer & Kaprow,
Attorneys for Petitioners.

Dated: October 6, 1950.

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CHARLES ELMORE C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No. 350

Cause No. 1

LEON LEIGHTON, MELVIN L. KRULEWITCH and ISIDOR WASSERVOGEL, as Trustees under a Declaration of Trust, dated March 27, 1936, and a Plan of Reorganization for Series B-K mortgage investments, approved by an order of the Supreme Court of the State of New York, entered December 19, 1935,

Petitioners,

against

MORRIS JAWROWER,

Respondent.

Cause No. 2

LEON LEIGHTON, MELVIN L. KRULEWITCH and ISIDOR WASSERVOGEL, as Trustees under a Declaration of Trust, dated March 27, 1936, and a Plan of Reorganization for Series B-K mortgage investments, approved by an order of the Supreme Court of the State of New York, entered December 19, 1935,

Petitioners,

against

MORRIS JAWROWER,

Respondent.

CROSS PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

BARNET KAPROW,
Counsel for Petitioners.

KRAMER & KAPROW,
Attorneys for Petitioners.

Dated: October 6, 1950.

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Petitioners,

against

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CROSS PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

TO: THE HON. CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioners pray for the issuance of a writ of certiorari in Cause No. 2 to review the judgment of the Court of Ap-

peals of the State of New York made on July 11, 1950 which upheld the constitutionality of the New York State Emergency Housing and Rent Control Law (Chap. 250 of the Laws of New York of 1950), for convenience hereinafter referred to as the State Rent Law, insofar as it relates to the period after the effective date thereof, May 1, 1950. Petitioners pray that this writ be issued only in the event that this Court grants the petitions of the respondent and Attorney General of the State of New York for writs of certiorari from the determination of the said Court of Appeals insofar as it struck down the Sharkey Law (Local Law No. 73 of the New York City Laws of 1949 as validated by Ch. 1 of the New York State Laws of 1950) and Section 13-a of the State Rent Law. Section 13-a is the so-called retroactive provision which barred Federal rent increases for the period prior to May 1, 1950.

Opinion Below

The opinion of the New York Court of Appeals is officially reported in 301 N. Y. 346-370. The record of the proceedings has been filed by the tenant-respondent herein as petitioner, on his application for a writ of certiorari.

Jurisdiction

The jurisdiction of this Court to review this case is invoked under Title 28 of the United States Code, Section 1257 (3); 62 Stat. 929.

Pertinent Provisions of Statutes Involved on Cross Petition

1. The State Rent Law (Chapter 250 of the New York Laws of 1950), in effect (a) freezes dwelling rents in the City of New York at the March 1, 1949 levels and elsewhere in the State of New York at the March 1, 1950 levels; (b)

bars rent adjustments in favor of landlords, except that it gives the Commission the power to entertain applications for adjustments (not later than December 1, 1950) in instances where expenses (before depreciation) exceed income, or where hardship results on the basis of comparability, or in cases of gross inequities; and (c) bars any claims for the differences between Federally approved rentals and local (Sharkey) Law rentals for any period prior to May 1, 1950, whether or not the Sharkey Law is upheld as valid.

2. The Federal Emergency Price Control Act of 1942, as amended (U. S. Code, Title 50, Appx., Sec. 901, *et seq.*), for convenience hereinafter referred to as the Federal Rent Law, froze rents at 1943 levels and (by the 1949 Act) permitted adjustments "to remove hardships or to correct other inequities." The 1949 Act also provided that "In making and recommending individual and general adjustments to remove hardships or to correct other inequities, the Housing Expediter and local boards shall observe the principle of maintaining maximum rents for controlled housing accommodations, so far as is practicable, at levels which will yield to landlords a fair net operating income from such housing accommodations" (Housing and Rent Act of 1947, Sec. 204, sub. (b), Par. (1), as amended; U. S. Code, Title 50, Appx., Sec. 1894, Sub. (b), Par. (1). The 1949 Law also set up "local option" provisions (Sec. 204j) by which State control or decontrol, or Municipal decontrol could be accomplished.

The Cases Involved

On July 8, 1949, retroactive to March 15, 1948, landlords-petitioners secured a Federal rent increase of $1.32 per months (from $39 to $40.32). The first above-entitled cause (involving the constitutionality of the Sharkey Law) was a summary proceeding to dispossess the tenant-respondent

for failure to pay the increased rental of $40.32 for the month of February, 1950 and arrears of $1.32 per month for November and December, 1949 and January, 1950. The second above-entitled cause (involving the constitutionality of the State Rent Law) was an action to recover the Federally approved rent of $40.32 for May, 1950, plus arrears of $1.32 per month for March and April, 1950. By invalidating the Sharkey Law, the State Court of Appeals upheld the right to collect $40.32 for February, 1950 and the arrears of $1.32 for November and December, 1949 and January, 1950 (Cause No. 1). By invalidating Section 13-a of the State Rent Law, the State Court of Appeals upheld the right to collect $1.32 rental arrears for March and April, 1950 (Cause No. 2). By upholding the State Rent Law prospectively, that is to say, for the period after its effective date on May 1, 1950, the State Court of Appeals refused to allow petitioners, on and after May 1, 1950, to collect $40.32 as the rental of the apartment occupied by the tenant-respondent.

This cross-petition, therefore, brings up the question of the correctness of the decision by the State Court of Appeals in upholding the prospective provisions of the State Rent Law.

Question Presented on Cross Petition in Cause No. 2

Do the prospective provisions of the State Rent Law (Chapter 250 of the New York State Laws of 1950) deprive petitioners of their property without due process of law, in contravention of the Fourteenth Amendment of the United States Constitution?

Specifications of Error

In the State Court of Appeals, petitioners urged that the State Rent Law was violative of the Due Process clause of the Fourteenth Amendment of the Federal Constitution, not only in respect to its retroactive provisions (Section 13-a of the State Rent Law), but also in respect to its prospective provisions. In upholding the State Rent Law prospectively as a valid exercise of the police power, the State Court erred in rejecting the point made by the petitioners that the State Rent Law, in effect, brought about an absolute freeze of rents until not later than December 1, 1950, when adjustment applications may be entertained in cases where out-of-pocket expenses, before depreciation, exceed rental income or where hardship results in instances of comparability, or in cases of gross inequities.

No rent law has gone so far as to put an absolute freeze on rents for a period in the future, especially in the light of continuing ameliorating Federal legislation permitting rent adjustments. Even the voided Sharkey Law provided for immediate adjustments. The New York State Commercial and Business Rent Control Laws also provided for immediate fair and reasonable rentals to be fixed either by arbitration or judicial determination (see *Twentieth Century Associates* v. *Waldman,* 294 N. Y. 571).

The State Rent Law may also be compared with the original Federal Rent Law (50 U. S. C. Appx. Supp. II, Sec. 901) which was upheld in *Bowles* v. *Willingham* (321 U. S. 503). This Court, in the *Bowles* case, observed that the Federal Rent Control Law provided for "adjustments for such relevant factors as he [the Administrator] may determine and deem to be of general applicability in respect of such accommodations, including increases or decreases in property taxes and other costs" (at p. 514), and for the right to protest any action of the Administrator (at p. 516). The State Law, as already noted, does not

make provision for immediate rent adjustments in cases of property losses, hardships or inequities. It does not even make provision for reconsideration of the Federal increases already obtained, that is to say, increases allowed to compensate for property operating losses as of a past period, as in the cases at bar. The Administrator, in fact, is not required to make regulations in respect thereto before December 1, 1950, and even then, any adjustment, when ultimately made, may not be retroactive (Section 4 (4)), as in the case of the Federal Rent Law. Considering the time (after December 1, 1950) that may be required to process a rent adjustment application, the foregoing, we submit, amounts to an absolute freeze of rents for an indefinite period and does not make for the due process found to be present in the *Bowles* case.

The absolute rent freeze upheld by the State Court of Appeals is also in conflict with *Block* v. *Hirsh* (256 U. S. 135), where this Court upheld the rent statute because "machinery is provided to secure to the landlord a reasonable rent" (at p. 157) and *U. S.* v. *Commodities Trading Corp.* (339 U. S. 121), where this Court upheld the general rule of ceiling prices provided there was "room for special exceptions." A statute of the nature here under consideration "pressed to a certain height, might amount to a taking without due process of law. *Martin* v. *District of Columbia;* 205 U. S. 135, 139." (Mr. Justice Holmes in *Block* v. *Hirsh, supra*).

In the cases at bar, the petitioners had a vested right under the Federal rent increase order. That right was in respect to the rentals due and owing from and after the effective date of the Federal rent increase order (November 15, 1948) and continuing in the future as long as the respondent (a statutory tenant) chose to remain in possession (see *Wasservogel, et al.* v. *Meyerowitz, et al.,* 300 N. Y. 125, at p. 133). The State Court was bound to accept the said rent increase order and to act upon it, but could not review

or overrule it for supposed invalidity (*Testa* v. *Katt*, 330 U. S. 386; *Wasservogel et al.* v. *Meyerowitz, et al.*, 300 N. Y. 125; *Matter of Schmoll, Inc.* v. *Federal Reserve Bank*, 286 N. Y. 503). In the light of the foregoing, it is at least doubtful whether the State Rent Law, in nullifying the Federal rent increase order, is constitutional prospectively (Cf. *Forbes Pioneer Boat Line* v. *Board*, 258 U. S. 338).

Reasons for Granting the Writ

If the Court should determine to grant the tenant-respondent's and Attorney General's petitions for writs of certiorari to review the judgment of the State Court of Appeals, invalidating the Sharkey Law and Section 13-a of the State Rent Law, it would appear that the entire State Rent Law should be reviewed, so as to correct any error of the State Court of Appeals in respect to its entire decision. It is for this reason that we are submitting his conditional cross-petition.

Conclusion

It is respectfully submitted that in the event this Court should grant the petitions of the respondent and Attorney General, for writs of certiorari, this petition for a writ of certiorari should likewise be granted so that the entire question can be reviewed by this Court and a determination reached as to the validity of the laws under review.

Respectfully submitted,

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Counsel for Petitioners.

KRAMER & KAPROW,
Attorneys for Petitioners.

Dated: October 6, 1950.